

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C. SARAVANAN

C.R.P(PD) Nos.2809 & 2810 of 2014
and
M.P.Nos.1, 1 of 2014

B.Indira

.. Petitioner

vs

Parvathiammal

.. Respondent

Prayer in C.R.P(PD) No.2809 of 2014: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned order dated 25.02.2014 passed in I.A.No.315 of 2013 in O.S.No.305 of 2007 on the file of the Principal District Court, Tiruvallur.

Prayer in C.R.P(PD) No.2810 of 2014: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned order dated 25.02.2014 passed in I.A.No.316 of 2013 in O.S.No.305 of 2007 on the file of the Principal District Court, Tiruvallur.

For Petitioner : Mr.D.Prasanna in both C.R.Ps

COMMON ORDER

The present civil revision petitions have been filed against the fair and decretal order dated 25.02.2014 passed in I.A.Nos.315 and 316 of 2013 rejecting the prayer of the petitioner for reopening the evidences and to cross examine CW1.

2. This case was heard on 19.03.2015 and after hearing the arguments order was pronounced allowing the civil revision petition. However, on perusing the records further while dictating the order in the chamber, it was noticed that the petitioner had failed to address to vital facts which are relevant for a fair disposal of the present civil revision petition. Hence, the case was directed to be listed for hearing. Accordingly, the case is now listed today and taken up for hearing.

3. The counsel for the petitioner was present. Today also there is no representation on behalf of the respondent though notice has been served on her.

4. Short point that arises for consideration is whether the Court below was justified in dismissing the respective applications filed under Order 18 Rule 17 of CPC to reopen evidence vide I.A.No.315 of 2013 and for consequential relief in I.A.No.316 of 2013 to further cross-examine CW1 and O.S.No.305 of 2007.

5. The petitioner had filed O.S.No.305 of 2007 for a specific performance of the contract pursuant to agreement of sale dated 14.09.2004 in respect of the suit schedule property.

6. The suit was filed on 05.09.2007 by the petitioner. In the suit, the respondent filed written statement denying the liability and further stated that the

petitioner had caused a legal notice dated 03.02.2005 agreeing to refund the advance received. The petitioner had denied having issued instructions to issue the aforesaid notice to her counsel.

7. By a judgment and decree the suit was decreed on 28.11.2008 as prayed for. Against the same A.S.No.730 of 2009 was filed by the respondent before this Court.

8. By an Order dated 18.01.2012 the said decree passed on 28.11.2008 was set aside and the case was remitted that the Court below for summoning advocate concerned as a Court witness giving liberty to both the sides to cross-examine and to adduce evidence.

9. Under these circumstances, the advocate was examined and cross-examined as CW1 on 18.10.2012. Thereafter, the petitioner filed the two applications on 19.07.2013.

10. The Court below held that in absence of sufficient material and delay in filing the applications, to reopen the evidence, they were liable to be dismissed.

11. The learned counsel for the petitioner submits that no prejudice will be

caused if the evidence is re-opened and further cross examination of CW1 is permitted. In this connection, the learned counsel referred to the decision of the Honourable Supreme Court in the case of **Vadiraj Nagappa Vernekar (Deceased) through his legal heirs Vs Sharadhchandra Prabhakar Gogate** reported in **2009 (4) SCC**, where in, it has been held as under:

“If evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, trial court may permit recall of such witness for re-examination-in-chief with permission to defendants to cross-examine the witness.”

12. The learned counsel referred to yet another decision of this Court in the case of **S.S.S.Durai Pandian Vs S.A.Samuthira Pandian** reported in **1998-1-L.W.778**, wherein it has been held as under:

“The recalling of the plaintiff for re-cross-examination would not, in any way, prejudice the interest of the plaintiff because the plaintiff also would be in a position to refer about the documents filed on behalf of the plaintiff through DW1 which would make the evidence substantive.”

13. I have considered the submissions made on behalf of the petitioner. Though the applications was filed for reopening the evidence and to recall the Court witness, the application is bereft of details and therefore the Court below was justified in dismissing the application. As per the decision of the Honourable Supreme Court in the case of **Vadiraj Nagappa Vernekar**

(Deceased) cited supra, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. **The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.**

14. Further, in Para 29 it has been held as follows:

It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court **either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.**

15. However, in the facts of the case it is noticed that there are no reasons forthcoming in the affidavit for reopening the evidence and for re-examination of PW1 except for a bald statement that it would be useful and fruitful to decide the case on merits and if such witness is not cross-examined the petitioner will be put to great loss, hardship and injury.

16. On facts, it is noticed that after CW1 was examined, PW4 and PW5

were also examine as early as June 2013 and therefore thereafter the application was filed.

17. Further as per the decision of this Court in **S.S.S.Durai Pandian Vs S.A.Samuthira Pandian** reported in **1998-1-L.W.778**, though the trial Court has powers to recall the plaintiff for re-examination under Order 18 Rule 17 of CPC and such powers are of very wide amplitude, it has been held that such power is discretionary and that such power has to be exercised the greatest care only in the peculiar circumstances.

18. I do not find any fault with the Order of the Court. Consequently, I am of the view that the Court below has rightly exercised the discretion against the petitioner by dismissing the application.

19. The Civil Revision Petitions are liable to be dismissed and are hereby dismissed. Consequently, the connected Miscellaneous Petitions are closed.

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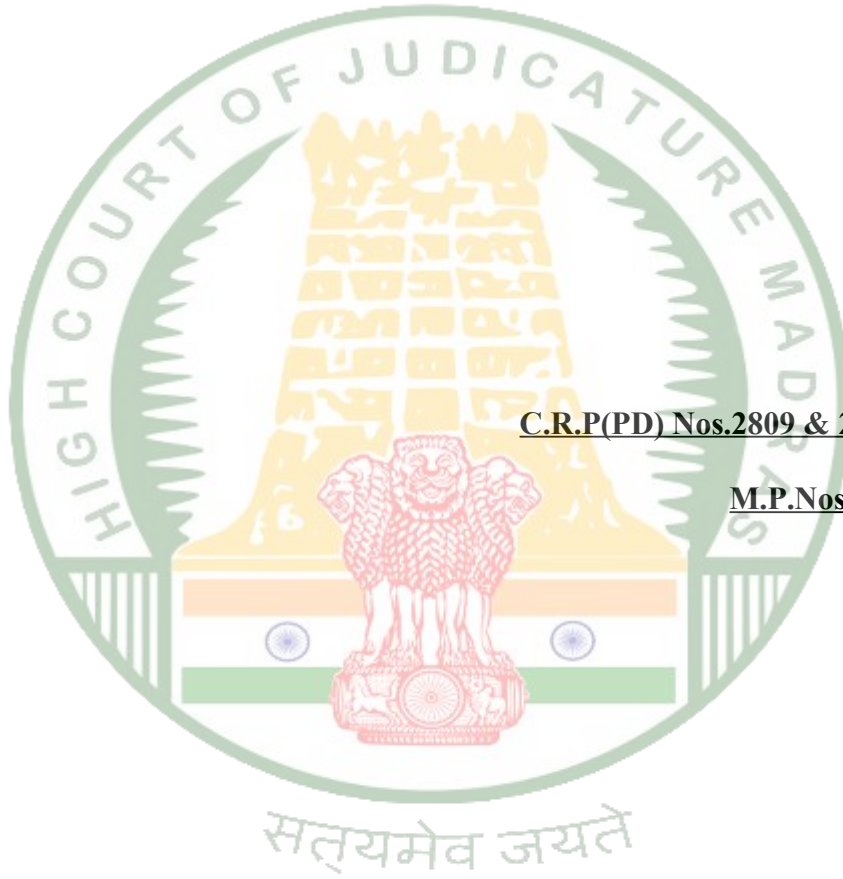
Principal District Court,
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C.SARAVANAN,J.

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